



DAVID MAXWELL-JOLLY
Director

State of California—Health and Human Services Agency
Department of Health Care Services



ARNOLD SCHWARZENEGGER
Governor

ACTION: Notice of Emergency Rulemaking
Title 22, California Code of Regulations

SUBJECT: Long-Term Care Reimbursement, DHCS-03-030E

The Department of Health Care Services (Department) has adopted the regulations described in this notice on an emergency basis and they are now in effect.

PUBLIC PROCEEDINGS: Notice is hereby given that the Department will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in this notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Welfare and Institutions Code Section 14105 requires the Department to adopt regulations establishing reimbursement rates for Medi-Cal providers of health care services and mandates for the emergency adoption of regulations for these changes in response to legislative budgeting decisions.

This emergency regulatory action amends the California Code of Regulations (CCR), Title 22 to reflect reimbursement rates established by the Department for specific types of facilities providing long-term care services to Medi-Cal beneficiaries. There are two time periods affecting the CCR sections established in the table below that are revealed through this regulatory action. The first time period being July 1, 2003 through July 31, 2003, which reflects the standard reimbursement rate for that period in addition to the Quality Assurance Fee (QAF), as described below. The second time period is the rate year August 1, 2003 through July 31, 2004. In the 2003-04 Budget Act (Chapter 157, Statutes of 2003), Items 4260-101-0001 and 4260-101-0890, the Legislature appropriated funding to pay these rates. These reimbursement rates are for services provided on or after August 1, 2003 and include the QAF, as described below.

This regulatory action establishes that reimbursement rates, as described above, include the QAF, pursuant to provisions under Health and Safety Code, Sections 1324 through 1324.14. These provisions require the Department to impose a QAF of six percent of the entire gross receipts for each Intermediate Care Facility for the Developmentally Disabled (ICF/DD), Intermediate Care Facility for the Developmentally

Disabled-Habilitative (ICF/DD-H), and Intermediate Care Facility for the Developmentally Disabled-Nursing (ICF/DD-N), effective July 1, 2003.

The Title 22, CCR sections that are affected through this regulatory action, the service and the weighted average percentage change are specified in the table below.

<u>Section</u>	<u>Service</u>	<u>Weighted Average Percentage Change</u>
51510 (e)	Nursing Facility Level A Services	1.47
51510.1(d) & (e)	Intermediate Care Services for the Developmentally Disabled	2.38
51510.2(a)	Intermediate Care Services for the Developmentally Disabled-Habilitative	0.00
51510.3(a)	Intermediate Care Services for the Developmentally Disabled-Nursing	0.00
51511(a)	Nursing Facility Level B Services 2003-04	3.92
51511.5(a), (e) (f) & (g)	Nursing Facility Services – Subacute Care Reimbursement	0.82
51511.6(a), (b) & (c)	Nursing Facility Services – Pediatric Subacute Care Reimbursement	2.00
51535(d)	Leave of Absence	2.02
51535.1(d)	Bed Hold for Acute Hospitalization	2.02
51544(h)	Hospice Care	N/A
54501(b)	Adult Day Health Care Services	1.47

The percentages listed above cannot be used to determine the rate for each facility category from the prior year. The percentage changes shown above are averages of all facility categories in each regulation section, weighted by patient days for those categories.

In addition to the reimbursement rates as specified above this regulatory action will also accomplish the following:

- Make non-substantial grammatical, typographical, organization, cross reference, and capitalization amendments where applicable throughout the regulations.
- Under Section 51510(e) specify rates for freestanding Level A nursing facilities.
- Under Sections 51511(a)(2)(C) and 51511.5(f)(2) state the audit disallowance factor to reflect data for the fiscal year 2003-04 rate setting period.
- Under Sections 51511 and 51511.5 revise dates to reflect the fiscal year 2003-04 rate setting period.
- Under Section 51544(h) set forth that payment for hospice care services shall be 95 percent of the facility's Medi-Cal per diem rate where the patient resides.

AUTHORITY:

Sections 20, 1267.7 and 1275.3 Health and Safety Code; and Sections 10725, 14105, 14108, 14108.1, 14108.2, 14109.5, 14110.6, 14110.7, 14124.5, 14125.5, 14126.023 and 14570, Welfare and Institutions Code.

REFERENCE:

Sections 14053, 14087.3, 14105, 14105.47, 14105.981, 14108, 14108.1, 14108.2, 14109.5, 14110.1, 14110.4, 14110.6, 14110.7, 14123, 14132.22, 14132.25 and 14571, Welfare and Institutions Code; Sections 1250, 1267.7, 1275.3, 1324, 1324.2, 1324.4, 1324.6, 1324.8, 1324.10, 1324.12 and 1324.14 Health and Safety Code; Statutes of 2003, Chapter 157, Items 4260-101-0001 and 4260-101-0890; Sections 447.15 and 483.1, et seq., Title 42, Code of Federal Regulations; 42 United States Code Section 1396(a)(13)(B) [Section 1902(a)(13)(B) of the Federal Social Security Act]; and the Settlement Agreement in *California Association for Adult Day Services v. Department of Health Services*, January 12, 1994, San Francisco County Superior Court (Case Number 944047).

COMMENTS: Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by 5 p.m. on September 3, 2010, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD. Written comments may be submitted as follows:

1. By mail or hand-delivered to the Office of Regulations, Department of Health Care Services, MS 0015, 1501 Capitol Avenue, P.O. Box 997413, Sacramento, CA 95899-7413; or
2. By fax transmission: (916) 440-5748; or

3. By email to regulations@dhcs.ca.gov (it is requested that email transmissions of comments, particularly those with attachments, contain the regulation package identifier "DHCS-03-030E" in the subject line to facilitate timely identification and review of the comment).

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

INQUIRIES: Inquiries regarding the substance of the emergency regulations described in this notice may be directed to Sandy Yien of the Rate Development Branch, at (916) 552-9636.

All other inquiries concerning the action described in this notice may be directed to Ben Carranco of the Office of Regulations, at (916) 440-7766, or to the designated backup contact person, Lynette Cordell, at (916) 650-6827.

CONTACTS: In any inquiries or written comments, please identify the action by using the Department regulation package identifier, **DHCS-03-030E**.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS: The Department has prepared and has available for public review an initial statement of reasons for the emergency regulations, all the information upon which the emergency regulations are based, and the text of the emergency regulations. The Office of Regulations, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the emergency regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at www.dhcs.ca.gov by clicking on the Decisions Pending and Opportunity for Public Participation link (from the left menu), then selecting the Proposed Regulations link.

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440-7695 (or California Relay at 711/1-800-735-2929), or email regulations@dhcs.ca.gov, or write to the Office of Regulations at the address noted above. Upon specific request, these documents will be made available in Braille, large print, and audiocassette or computer disk.

AVAILABILITY OF CHANGED OR MODIFIED TEXT: The full text of any regulation which is changed or modified from the express terms of the emergency action will be

made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

FISCAL IMPACT ESTIMATE:

- A. Fiscal Effect on Local Government: None
- B. Fiscal Effect on State Government: Additional Cost of \$51,259,000 in fiscal year 2003-04 and \$61,775,000 annually. These costs were included in the May 2004 Estimate and are now included in the ongoing Medi-Cal base expenditures.
- C. Fiscal Effect on Federal Funding of State Programs: Additional Cost of \$51,259,000 in fiscal year 2003-04 and \$61,775,000 annually. These costs were included in the May 2004 Estimate and are now included in the ongoing Medi-Cal base expenditures.
- D. All cost impacts, known to the agency at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- E. Other nondiscretionary costs or savings including revenue changes imposed on State or Local Government: None

DETERMINATIONS: The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has made an initial determination that the regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California.

- (3) The expansion of businesses currently doing business within the State of California.

The Department has determined that the regulations would not affect small business because the regulations do not impose any additional reporting, recordkeeping, or other compliance requirements on small businesses.

The Department has determined that the regulations will have no impact on housing costs.

ADDITIONAL STATEMENTS AND COMMENTS: In accordance with Government Code Section 11346.5(a)(13) the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

No public hearing has been scheduled; however any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8. The Department shall consider all comments received regarding the proposal equally, whether submitted in writing or through oral testimony at a public hearing.

For individuals with disabilities, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write: Susan Pierson, Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413, voice (916) 440-7695; and/or California Relay 711/1-800-735-2929. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

DEPARTMENT OF HEALTH CARE SERVICES

DHCS-03-030E

Dated: May 11, 2010


David Maxwell-Jolly
Director